

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MICHAEL BRUCE BYNOE,

Petitioner,

v.

HELLING, et al.,

Respondents.

Case No. 3:07-cv-00009-LRH

ORDER

On September 23, 2009, this court dismissed petitioner Michael Bruce Bynoe's first-amended § 2254 habeas petition without prejudice because all grounds were unexhausted (ECF No. 41). The court denied Bynoe's motion to stay. *Id.* Judgment was entered (ECF No. 42). Seven years later, on September 14, 2016, petitioner filed a motion for relief from final judgment and to reopen the case (ECF No. 52).

At the time the court dismissed Bynoe's petition as wholly unexhausted, a petition containing only unexhausted claims was not eligible for the stay and abey procedure outlined in *Rhines v. Weber*, 544 U.S. 269 (2005) ECF No. 41). In February 2016, the Ninth Circuit held in *Mena v. Long* that the *Rhines* stay-and-abey procedure is not limited to mixed petitions and held that a district court may exercise its discretion to stay a petition that raises only unexhausted claims. 813 F.3d at 912. In September 2016, Bynoe filed a motion for relief from judgment in light of the *Mena* decision (ECF No. 52). This court concluded that Bynoe failed to demonstrate that extraordinary circumstances warranted relief from judgment and denied the motion (ECF No. 65).

Bynoe appealed, and in July 2020, the Ninth Circuit reversed and remanded (see ECF No. 74). The court of appeals directed that on remand Bynoe may request that this

1 court stay his petition under *Rhines* and *Mena* while he returns to state court to exhaust
2 his federal constitutional claims.

3 Accordingly, Bynoe has 30 days to file a motion for stay and abeyance.

4 **IT IS THEREFORE ORDERED** that petitioner has **30 days** from the date of this
5 order to file a motion for stay, if any. Respondents may file a response and petitioner may
6 reply as per the normal briefing schedule under the local rules.

7 **IT IS FURTHER ORDERED** that if petitioner fails to respond to this order the
8 petition may be dismissed.

9
10
11 DATED this 19th day of April, 2021.

12 
13 LARRY R. HICKS
14 UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28